

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
July 11, 2006 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Mark Kinser, presiding Board member, presided. No other Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case

Lic = Licensing Application

RF = Recovery Fund Claim

Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant

A = Applicant

R = Respondent/Regulant

W = Witness

Atty = Attorney

**Participants**

- |   |  |
|---|--|
| 1. Decorcraft Home Improvement & Design Services LLC<br>File Number 2005-04661 (Disc)<br>(NO DECISION MADE) | None   |
| 2. Decorcraft Home Improvement & Design Services LLC<br>File Number 2006-00833 (Disc)<br>(NO DECISION MADE) | None   |
| 3. Shawn Phillips<br>File Number 2006-00905 (Disc)<br>(NO DECISION MADE)                                    | Phillips – R (by phone)<br>James Anjam – W<br>Chuck Vernon – W                                 |
| 4. United American Inc.<br>File Number 2006-01596 (Disc)<br>(NO DECISION MADE)                              | None   |
| 5. Twin Enterprises Inc.<br>File Number 2005-00618 (Disc)<br>(NO DECISION MADE)                             | Travis Hackworth – R<br>Daniel Beiger – R Atty<br>Kenneth Elkington – C<br>Renae Elkington – C |

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

**Re: Earl W Higgins, t/a Higgins Well Drilling  
Hillsville, VA 24343**

**File Number 2006-01753  
License Number 2705027613**

**CONSENT ORDER**

**Respondent Earl W Higgins, t/a Higgins Well Drilling ("Earl W Higgins") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.**

**Board's Regulations provides:**

**18 VAC 50-22-200. Remedial education, revocation or suspension; fines.**

**The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.**

*Historical Notes:*

*Derived from VR220-01-2:1 §5.1, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.*

**Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:**

**On June 12, 2006, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Earl W. Higgins ("Higgins") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.**

**On July 11, 2006, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.**

In regards to Counts 1 and 2, Higgins testified that the contracts were verbal and the only signed contract was actually a receipt. Higgins stated he has been doing contracting for over twenty (20) years and never used a contract. Higgins also stated he was not aware he needed a contract.

In regards to Counts 3, 4 and 5, Higgins testified that he experienced several unforeseen events that caused him financial difficulties. Higgins has paid Mosier \$200.00, but has not put any agreement in writing.

The following individuals participated at the IFF: Earl W. Higgins, Respondent; Joseph Haughwout, Staff Member; and Mark Kinser, Presiding Board Member.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

The Board and Earl W Higgins, as evidenced by the signatures affixed below, enter into this Consent Order. Earl W Higgins knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Earl W Higgins acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Earl W Higgins consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.8	\$300.00
	Count 2	18 VAC 50-22-260.B.9	\$300.00
	Count 3	18 VAC 50-22-260.B.14	\$500.00
	Count 4	18 VAC 50-22-260.B.16	\$500.00
	Count 5	18 VAC 50-22-260.B.28	\$500.00
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	TOTAL MONETARY PENALTIES		\$2,100.00

In addition, for violation of Counts 1 and 2, Earl W Higgins agrees to successfully complete remedial education by attending the Board's contracting license class and passing the examination within six (6) months of the effective date of this order.

In addition, for violation of Counts 3, 4, and 5, Earl W Higgins agrees to satisfy the judgment and provide the Board with proof of the satisfaction within six (6) months of the effective date of this order. However, if Earl W Higgins establishes a payment plan and enters into a written agreement with David Mosier, Earl W Higgins agrees to provide a copy of the agreement and satisfy the judgment in accordance with that agreement. Failure to comply with this term will result in automatic revocation of his license.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Earl W Higgins acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Earl W Higgins will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

**Earl W Higgins acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Earl W Higgins's license until such time as there is compliance with all terms of this Order. Earl W Higgins understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.**

The effective date of this Order shall be the date of execution by the Board.

**SEEN AND AGREED TO:**

\_\_\_\_\_  
Earl W Higgins  
t/a Higgins Well Drilling

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Board for Contractors

BY: \_\_\_\_\_  
Jay W. DeBoer, Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917**

**REPORT OF FINDINGS**

**BOARD:** Board for Contractors  
**DATE:** March 27, 2006 (revised May 9, 2006 by wm and June 12, 2006)

**FILE NUMBER:** 2006-01753  
**RESPONDENT:** Earl W. Higgins, t/a Higgins Well Drilling  
**LICENSE NUMBER:** 2705027613  
**EXPIRATION:** May 31, 2007

**SUBMITTED BY:** Erin K. Thompson  
**APPROVED BY:** Wayne Mozingo

**COMMENTS:**

None.

\*\*\*\*\*

Earl W. Higgins ("Higgins"), t/a Higgins Well Drilling, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705027613).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

**BACKGROUND:**

On October 14, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from David H. Mosier ("Mosier") regarding Higgins. (Exh. C-1)

On April 4, 2005, Higgins entered into a written contract, in the amount of \$3,800.00, with Mosier to drill a well and install all equipment necessary to get water from the well to the home at 4212 Squirrel Spur Road, Meadows of Dan, Virginia 24120. (Exh. C-2)

On April 4, 2005, Mosier paid Higgins \$3,800.00 by check. (Exh. C-3)

On April 4, 2005, Higgins commenced work. (Exh. I-1)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

The contract was signed by Higgins, but not signed by Mosier. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

**FACTS:**

The contract used by Higgins in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. C-2)

3. **Board Regulation (Effective January 1, 2003)**

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

**FACTS:**

On April 4, 2005, Higgins told Mosier that he had struck water, but decided to continue drilling. (Exh. C-1 and I-1)

In the middle of June 2005, Higgins asked Mosier to release him for two weeks because of financial difficulties and mechanical problems. (Exh. C-4 and I-1)

Between June 2005 and August 15, 2005, Mosier attempted to contact Higgins by telephone. (Exh. I-1)

Between March 2005 and November 4, 2005, Mosier did not have water in the cabin. (Exh. I-1)

In a written response, Higgins stated he made a decision to drill to a depth of 200 feet to ensure a good quantity of water. Higgins also stated after that he had major engine failure. After repairing the engine, Higgins drilled the well to a depth of 500 feet but the well failed. At that time, Higgins asked Mosier to leave for a short period of time to become financially stable again. Higgins further stated, "I had every intention of returning to finish what I had started, we stayed in communication until one night his son called me a liar, a crook, and I had giving them the impression I was not coming back." (Exh. R-1)

Mosier hired another contractor to drill the well and install everything necessary to get the water to the home. (Exh. I-2)



4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 3:

On August 15, 2005, Mosier sent a letter to Higgins requesting he return the \$3,000.00 by August 26, 2005. (Exh. C-4)

As of November 3, 2005, Higgins failed to refund money received for work not performed or performed only in part. (Exh I-1)

In a written response, Higgins stated, "It was never my intent to cheat Mr. Mosier, nor will I ever cheat him. I intend to refund his money if it take the rest of my life. Due to a series of unfortunate incidents I have not been able to return or refund anything at this time. (Exh. R-1)

5. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

Historical Notes:

*Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.*

Print Date: August 1, 2005

FACTS:

On January 4, 2006, in the Patrick County General District Court, Mosier was awarded a \$3,800.00 judgment against Higgins. (Exh. I-3)

As of February 13, 2006, Higgins failed to satisfy the judgment. (Exh. I-2)

6. Earl W. Higgins  
t/a Higgins Well Drilling  
File Number 2006-01753 (Disc)

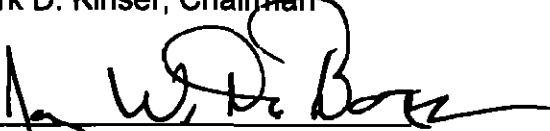
Higgins – R

The meeting adjourned at 4:55 p.m.

BOARD FOR CONTRACTORS



\_\_\_\_\_  
Mark D. Kinser, Chairman



\_\_\_\_\_  
Jay DeBoer, Secretary

COPY TESTE:

\_\_\_\_\_  
Custodian of Records

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1. Name: Mark Kinser
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on July 11, 2006
5. Nature of Personal Interest Affected by Transaction: \_\_\_\_\_

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.



Signature

7-11-06

Date